

Senate Engrossed

**FILED**

**JANICE K. BREWER  
SECRETARY OF STATE**

State of Arizona  
Senate  
Forty-eighth Legislature  
Second Regular Session  
2008

CHAPTER 40

# **SENATE BILL 1057**

AN ACT

AMENDING SECTION 38-1101, ARIZONA REVISED STATUTES; RELATING TO LAW  
ENFORCEMENT OFFICER REPRESENTATION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 38-1101, Arizona Revised Statutes, is amended to  
3 read:

4 38-1101. Law enforcement officers; probation officers; right to  
5 representation; right to evidence on appeal; change  
6 of hearing officer or administrative law judge;  
7 definitions

8 A. If an employer interviews a law enforcement officer or probation  
9 officer and the employer reasonably believes that the interview could result  
10 in dismissal, demotion or suspension:

11 1. The law enforcement officer or probation officer may request to  
12 have a representative of the officer present at no cost to the employer  
13 during the interview. The law enforcement officer or probation officer shall  
14 select a representative who is available on reasonable notice so that the  
15 interview is not unreasonably delayed. The representative shall participate  
16 in the interview only as an observer. Unless agreed to by the employer, the  
17 representative shall be from the same agency and shall not be an attorney.  
18 The law enforcement officer or probation officer shall be permitted  
19 reasonable breaks of limited duration during any interview for telephonic or  
20 in person consultation with others, including an attorney, who are  
21 immediately available. An employer shall not discipline, retaliate against  
22 or threaten to retaliate against a law enforcement officer or probation  
23 officer for requesting that a representative be present or for acting as the  
24 representative of a law enforcement officer or probation officer pursuant to  
25 this paragraph.

26 2. Before the commencement of any interview described in this section,  
27 the employer shall provide the law enforcement officer or probation officer  
28 with a written notice informing the officer of the specific nature of the  
29 investigation, the officer's status in the investigation, all known  
30 allegations of misconduct that are the reason for the interview and the  
31 officer's right to have a representative present at the interview.

32 B. ~~Nothing in this subsection shall~~ SUBSECTION A DOES NOT require the  
33 employer to either:

34 1. Stop an interview to issue another notice for allegations based on  
35 information provided by the employee during the interview.

36 2. ~~To~~ Disclose any fact to the employee or the employee's  
37 representative that would impede the investigation.

38 C. Subsection A does not apply to an interview of a law enforcement  
39 officer or probation officer that is:

40 1. In the normal course of duty, counseling or instruction or an  
41 informal verbal admonishment by, or other routine or unplanned contact with,  
42 a supervisor or any other law enforcement officer or probation officer.

43 2. Preliminary questioning to determine the scope of the allegations  
44 or if an investigation is necessary.

45 3. Conducted in the course of a criminal investigation.

46 4. Conducted in the course of a polygraph examination.

1           D. In any appeal of a disciplinary action by a law enforcement officer  
2 or probation officer, the parties shall exchange copies of all relevant  
3 documents and a list of all witnesses pursuant to the following time periods  
4 and requirements:

5           1. Within three business days after the employer's receipt of a  
6 written request from the law enforcement officer or probation officer for a  
7 copy of the investigative file that is accompanied by a copy of the filed  
8 notice of appeal, the employer shall provide a complete copy of the  
9 investigative file as well as the names and home or work mailing addresses of  
10 all persons interviewed during the course of the investigation.

11           2. No later than five business days before the appeal hearing, or, if  
12 the appeal hearing is scheduled more than twenty days after the notice of  
13 appeal, no later than ten business days before the appeal hearing, the  
14 employer and the law enforcement officer or probation officer shall exchange  
15 copies of any documents that may be introduced at the hearing and that have  
16 not previously been disclosed.

17           3. No later than five business days before the appeal hearing, or, if  
18 the appeal hearing is scheduled more than twenty days after the notice of  
19 appeal, no later than ten business days before the appeal hearing, the  
20 employer and the law enforcement officer or probation officer shall exchange  
21 the names of all witnesses who may be called to testify. A witness may be  
22 interviewed at the discretion of the witness. The parties shall not  
23 interfere with any decision of a witness regarding whether to be interviewed.  
24 An employer shall not discipline, retaliate against or threaten to retaliate  
25 against any witness for agreeing to be interviewed or for testifying or  
26 providing evidence in the appeal.

27           E. It is unlawful for a person to disseminate information that is  
28 disclosed pursuant to subsection D to any person other than the parties to  
29 the appeal and their lawful representatives for purposes of the appeal of the  
30 disciplinary action. This subsection does not prohibit the use of the  
31 information in the hearing or disclosure pursuant to title 39, chapter 1,  
32 article 2.

33           F. The employer or the law enforcement officer or probation officer  
34 may seek a determination by the hearing officer, administrative law judge or  
35 appeals board hearing the appeal regarding any evidence that the employer or  
36 the law enforcement officer or probation officer believes should not be  
37 disclosed pursuant to subsection D because the risk of harm involved in  
38 disclosure outweighs any usefulness of the disclosure in the hearing. In  
39 determining whether evidence will be disclosed, the hearing officer,  
40 administrative law judge or appeals board may perform an in camera review of  
41 the evidence and may disclose the material subject to any restriction on the  
42 disclosure, including the closing of the hearing or the sealing of the  
43 records, that the hearing officer, administrative law judge or appeals board  
44 finds necessary under the circumstances.

45           G. In any appeal of a disciplinary action by a law enforcement officer  
46 or probation officer in which a single hearing officer or administrative law

1 judge has been appointed to conduct the appeal hearing, the law enforcement  
2 officer or probation officer or the employer may request a change of hearing  
3 officer or administrative law judge. In cases before the office of  
4 administrative hearings, on the first request of a party, the request shall  
5 be granted. All other requests, including any subsequent requests in cases  
6 before the office of administrative hearings, may be granted only on a  
7 showing that a fair and impartial hearing cannot be obtained due to the  
8 prejudice of the assigned hearing officer or administrative law judge. The  
9 supervisor or supervising body of the hearing officer or administrative law  
10 judge shall decide whether a showing of prejudice has been made.

11 H. A party who violates subsection D or E, unless the violation is  
12 harmless, shall not be permitted to use that evidence at the hearing, except  
13 on a showing of good cause. The hearing officer or administrative law judge,  
14 on a showing of good cause, may grant the opposing party a continuance,  
15 otherwise limit the use of the evidence or make such other order as may be  
16 appropriate.

17 I. If the employer amends, modifies, rejects or reverses the decision  
18 of a hearing officer, administrative law judge or board, the employer shall  
19 state the employer's reasons for the amendment, modification, rejection or  
20 reversal.

21 J. This section does not preempt agreements that supplant, revise or  
22 otherwise alter the provisions of this section, including preexisting  
23 agreements between the employer and the law enforcement officer or probation  
24 officer or the law enforcement officer's or probation officer's lawful  
25 representative association.

26 K. For the purposes of this section:

27 1. "Appeal" means a hearing before a state or local merit board, a  
28 civil service board, an administrative law judge or a hearing officer.

29 2. "Disciplinary action" means the dismissal or demotion or the  
30 suspension for more than forty hours of a law enforcement officer or  
31 probation officer that is authorized by statute, charter or ordinance and  
32 that is subject to a hearing or other procedure by a local merit board, a  
33 civil service board, an administrative law judge or a hearing officer.

34 3. "Investigative file" means the law enforcement agency's complete  
35 report and any attachments detailing the incidents leading to the  
36 disciplinary action.

37 4. "Law enforcement officer" means:

38 (a) An individual, other than a probationary employee, who is  
39 certified by the Arizona peace officer standards and training board, other  
40 than a person employed by a multi-county water conservation district.

41 (b) A detention officer or correction officer, OTHER THAN A  
42 PROBATIONARY EMPLOYEE, who is employed by this state or a political  
43 subdivision of this state.

44 5. "Probation officer" means a probation officer or surveillance  
45 officer, OTHER THAN A PROBATIONARY EMPLOYEE, who is employed by this state or  
46 a political subdivision of this state.

APPROVED BY THE GOVERNOR APRIL 16, 2008.

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